IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 06.11.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.18087 of 1996

Tamil Nadu All Colleges Teachers
Association, rep. by its Honorary
Executive President T.M.Kullan,
Registration No.133/92,
Melrose, Church Hill Lane,
Ootacamund - 643 001,
The Nilgiris. ... Petitioner

vs.

1. The Secretary to Government,
Education, Science and
Technology Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.

2. The Commissioner of Collegiate
Education, College Road,
Nungambakkam, Madras-600 006.

3. The General Secretary,
Association of University Teachers,
68, Ram Lane, Nungambakkam,
Chennai-600 034.

4. The Registrar,
Bharathiar University,
Coimbatore.

5. The Secretary and Correspondent,
C.B.M. College, Coimbatore. ... Respondents

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Petition under Article 226 of the Constitution of India for the issuance of a writ of certiorari as stated therein.

For Petitioner : Mr.K.Sridhar,
for Mr.A.Bobbilie

For R-1 and R-2: Mr.V.Viswanathan,
Additional Govt. Pleader

For R-3 : Mr.D.Hariparanthaman

For R-4 and R-5: No appearance.

(Judgment of the Court, delivered by P.SATHASIVAM, J.)

Tamil Nadu All Colleges Teachers Association, represented by its Honorary Executive President T.M.Kullan, filed this Writ Petition for the issuance of a writ of certiorari to call for the entire records leading to the issuance of G.O.(ID) No.116 Education, Science and Technology Department (Z1), dated 17.9.1996 and G.O.Ms. No.699, Education, Science and Technology (Z.1) Department, dated 26.09.1996, and quash the same.

2. According to the Honorary President of the Petitioner Association, the members of the Association are the Teachers of all Colleges in Tamil Nadu both Government Colleges and Aided Private Colleges. The main aim of the Association is to protect the interest of the College Teachers' Community and the Association is different from other Associations catering to Teachers. It is stated that the Association is opposed to strikes and boycott of classes for redressal of their grievances with the management/authorities and that they believe in negotiations and, after failure of genuine efforts, move the appropriate court for justice. It is the claim of the Association that the Government have no power to withdraw the disciplinary action initiated against the teachers, who were actually absent by resorting to strike, by general amnesty as the Rules do not provide for such clement approach. The Government have no powers to condone the strike and pay the employees for the said period in violation of the Rule 'no work no pay'. Attending/conducting classes during vacation/holidays, that too after completion of semester, is meaningless and a farce.

3. Respondents-1 and 2 filed a counter affidavit, controverting all the allegations made by the petitioner Association and defending the impugned Government Orders.

4. Respondent No.3, through its General Secretary, filed a counter affidavit, highlighting their stand and supporting the orders passed by the Government.

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5. Brief facts are narrated here-under,

Members of the third respondent viz., Association of University Teachers' unit at C.B.M. College, Coimbatore, went on strike between 19.10.1992 and 19.02.1993 and totally struck the work for 41 days, challenging the appointment of Dr.T.Muthuraj as Principal to the CBM College, Coimbatore, instead of their candidate T.K.Ganapathy and also for restoring one V.R.Palanichamy as Head Clerk. Again, they went on strike between 28.09.1994 and 23.10.1994 for 26 days and the students community suffered immensely. The petitioner Association did not participate in the strike and remained loyal to the cause of education and the students community. Their teachers continued to teach regardless of the intimidation and harassment and threat to their personal safety posed from the members of the 3rd respondent Association. Neither the Management nor the University / Government appreciated the services of the C.B.M. Unit of the petitioner's Association. On the contrary, the teachers, who went on strike, were given special treatment and conciliatory gestures were made towards them. No disciplinary action was taken as per rule against the teachers, who went on strike and polluted the entire atmosphere. To the shock and surprise of the petitioner Association, the Government issued G.O.(ID) No.116 Education, Science and Technology Department (Z1), dated 17.9.1996, condoning the strike period. The Government passed another Order, viz., G.O.Ms.No.699, Education, Science and Technology (Z1) Department, dated 26.09.1996, in respect of the strike period between October 1992 and February, 1993 (41 days). R-5 Management and the striking teachers joined an unholy alliance and convinced the Government that they compensated the strike period by working on holidays. According to the petitioner Association, a fraud has been played by the respondents. Both the Government Orders are discriminatory and violative of Articles 14, 19(1) (g) and 21 of the Constitution inasmuch as loyal teachers of the petitioner Association have not been given similar treatment in the matter of grant of compensatory salary for work with empty classrooms during the holidays.

6. In order to appreciate the claim of the petitioner as well as the stand taken by R-1 to R-3, it is useful to refer to the salient features in both the Government Orders. In G.O. (1D). No.116, dated 17.09.1996, the following decision by the Government is relevant,

> " 3. The Government after careful examination issue orders regulating the strike period as follows:-
>
> i. The period of absence of members of the Association of University teachers from 28.9.94 Forenoon to 23.10.94 and the period of absence of the employees of the C.B.M. College, Coimbatore, from 12.7.94 to 27.9.94 is regularised as extraordinary leave without pay and allowances on the basis of the principle 'No work No pay'.

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ii. All the disciplinary cases initiated against the employees on the grounds of mere unauthorised absence due to participation in the strikes during the said period may be dropped. However, in respect of those involved in criminal offences, such as intimidation vandalism etc., the disciplinary action may not be dropped and action may continue to be taken against them as per the rules in force."

In G.O. Ms. No.699, dated 26.09.1996, after accepting the stand taken by the third respondent Association and the College Management and also the decision of the Officers of the Collegiate Education, the Government regularised the strike period since it was compensated by conducting classes during vacation, and consequently ordered payment of salary for the said period.

7. Now, the question for consideration is as to whether the Government is justified in condoning the absence of the members of the third respondent Association and passing the two Government Orders, directing payment of salary for the strike period and withdrawal of the disciplinary action.

8. Though the third respondent raised an objection as to the maintainability of this Petition as Public Interest Litigation, at this distant point of time, ie., after elapse of a decade, we are not inclined to go into such question.

9. Section 17 of the Tamil Nadu Private Colleges (Regulation) Act, 1976, enables the first respondent to frame Rules in respect of conditions of service of teachers working in private colleges. The Government had also framed the Tamil Nadu Private Colleges (Regulation) Rules, 1976. Rule 11(7) provides that the teachers employed in private colleges will be governed by leave rules approved by the Government from time to time. Since the Government is granting cent percent teaching grant, it has also assumed the power under Section 10(2) of the Act to withhold the grant if the management of a private college does not follow the directions issued by the Government. In those circumstances, when a teacher or group of teachers resorts to strike or remains absent without leave, the interregnum period will have to be regulated by appropriate orders, as otherwise, it may result in break in service besides loss of salary. In all such matters, the Government and the authorities subordinate to it will be guided by the recommendations of the Private College in which the said teacher is employed. Even when a private college passes an order contrary to various directions of the Government, R-1 and R-2, being the supervisory authorities, can very well revoke such decision and remedy the situation by issuing appropriate directions.

10. As stated earlier, the petitioner Association impugned the orders of the first respondent dated 17.09.1996 and 26.09.1996. It is

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brought to our notice that, in so far as the first order, dated 17.09.1996, it not only covers the teachers of the 5th respondent college but also other college teachers who are members of the third respondent Association and who participated in solidarity action with the striking teachers of 5th respondent college. In para No.3 of the said order, the Government had only regularised the strike period treating it as E.O.L. (Extraordinary Leave) without pay and allowance on the basis 'No work No pay'. In such circumstances, the petitioner Association can have no grievance especially when the teachers belonging to 3rd respondent Association had lost salary for a considerable period. The petitioner Association also highlighted that they were mainly aggrieved by the Government Order, withdrawing disciplinary action against the members of the third respondent. A perusal of the said Government Order makes it clear that the disciplinary action initiated against the employees on the ground of unauthorised absence due to participation in the strike during the said period may be dropped. In other words, it is for the private college management either to follow the said recommendations of the Government or to pursue action contrary to the recommendations. However, in respect of those involved in criminal activities such as intimidation, vandalism etc., the disciplinary action was not dropped but pursued as per Rules in force. This is clear not only from the Government Order dated 17.09.1996 but also from the counter affidavit filed by respondents-1 and 2. Hence, the order issued by the first respondent cannot be said to confer any special treatment or attributed to have set a bad example as stated by the petitioner.

11. Coming to the second Government Order dated 26.09.1996, it relates to the members of 3rd respondent Association working in the 5th respondent college. The first respondent, on the basis of the recommendation of the second respondent, found that out of the 41 days of strike, 4 days were declared as holidays in the 5th respondent college and, therefore, the strike was only for a period of 37 days. The 2nd respondent had issued documentary details, indicating that the teachers had compensated the period of absence for 31 days and the loss of work caused due to strike. Therefore, the impugned order specifies that the teachers should be paid for 31 days and the six days, which was not compensated to be treated as leave to which they were eligible.

12. The details further show that the first spell of strike was from 19.10.1992 to 21.02.1992 and the second spell was between 02.02.1993 and 24.02.1993 excluding the examination days. After the agitation, two agreements were made in the presence of various Government authorities with reference to the said two strike periods. In view of the fact that the matter became a state level issue, it was also raised on the floor of the State Assembly. In reply to 'members' call attention motion', the Minister for Education on the floor of the Tamil Nadu Legislative Assembly on 21.04.1993 placed a Report, wherein, it was stated that though the Government cannot grant wages for the strike period, if the teachers compensate the period of absence by working during the holidays, then, the

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wages would be paid. It is pointed out that, based on the agreement signed before the Tahsildar, Coimbatore, on 21.12.1992 and before the District Collector on 20.02.1993, the teachers were allowed to compensate the strike period by rescheduling the working day and the Principal in charge of the 5th respondent college by name M.Rakkiannan signed the statement for the teachers having compensated 31 days of work. He had also stated that 4 days were declared as Holidays. The said letter of the 5th respondent dated 23.06.1993 was forwarded to the second respondent and a request was made for payment of salaries to the teachers. Thereafter, the Regional Joint Director of College Education for Coimbatore region, by letter dated 30.06.1993, also forwarded proposals approving the payment of salaries. It is also brought to our notice that, in the meantime, the 5th respondent college conducted a meeting of parents' Association on several days and, in the meeting held on 21.6.1993, the management agreed to claim the salary of the teachers for which compensation had been made by them. The 5th respondent also convened a meeting of the College Committee on 28.10.1993. In that meeting, the College Committee had agreed to recommend salary for the strike period for the teachers to the Government. After prolonged discussion, it was agreed that the salary would be released on the basis of the recommendation made by the 2nd and 5th respondents. Thus, it is clear that the order dated 26.09.1996 came to be passed only after the condition that the teachers should compensate the lost working days and that, accordingly, the teachers compensated those days which was not only certified by R-5 but also recommended by the Regional Joint Director of College Education (Coimbatore Region). As rightly pointed out by the learned counsel for the third respondent, the authorities verified the correctness of the claim made by the teachers and no exception can be made to their statements.

13. The particulars furnished clearly show that both the impugned Government Orders were issued only after examining all the facts and circumstances of the case and to settle the disputes/issues involved in an amicable manner. As stated earlier, the disciplinary proceedings initiated against the teachers were dropped only as a gesture of goodwill. In fact, the Government had not dropped action against those who involved in criminal activities such as intimidation, vandalism etc. We are satisfied that both the Government Orders are valid and the Writ Petition is devoid of merits and the same is liable to be dismissed, accordingly dismissed. No costs.

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Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

JI.

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To
1. The Secretary to Government, Education, Science and
Technology Department, Government of Tamil Nadu,
Fort St. George, Chennai-600 009.

2. The Commissioner of Collegiate Education, College Road,
Nungambakkam, Madras-600 006.

3. The Registrar, Bharathiar University, Coimbatore.

+ 1 CC To Mr. A.Bobblie,Advocate SR NO.52969

+ 1 CC To Mr. D.Hariparanthaman, Advocate SR NO.52939

WP No.18087/1996.

Rna(co)
Gp/17.11.

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